

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3158 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RUPABEN WIFE OF CHANDUBHAI DEVABHAI VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3158 of 2004
MR BD JAIN for MR KK TRIVEDI for Petitioner No. 1
MS AC RAVAL, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenuue
has challenged her detention order dated 08-01-2004, by

which she is detained under PASA. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner, however, no statement of any witness is recorded by the authority. It is alleged that the petitioner is dealing in country liquor. The detaining authority after considering aforesaid cases has passed the order of detention, which is under challenge in this petition.

2) Mr.B.D.Jain, learned advocate for the petitioner submitted that all cases registered against the petitioner can be said to be cases of breach of law and order and the same cannot be said to be cases of breach of public order. He further submitted that the last incident registered against the petitioner was of 4th December 2003, and after a considerable time of about one month the order of detention was passed on 08-01-2004. He submitted that the authority has not recorded statements of any witnesses and only on the basis of criminal cases, the petitioner is detained under PASA. It is submitted that when material in the form of registered cases is available with the detaining authority, it is not necessary for detaining authority to wait for such a long time for passing the order of detention and, therefore, the order of detention is required to be quashed and set aside in view of this delay.

3) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition is not controverted by the authority. Under these circumstances, there is no alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident.

4) At this stage, after taking instruction from his client, learned advocate for the petitioner made a statement that the petitioner will not enter Olpad taluka upto 30th September, 2004 so that she may not be tempted to repeat such activity. This statement is recorded and the police authority is directed to monitor whether the petitioner is entering Olpad taluka or not.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 08-01-2004 is quashed and set aside. The detenue, Rupaben wife of

Chandubhai Devabhai Vasava is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

/malek